

IN THE DRAWINGS

The attached replacement sheets of drawings includes changes to Figures 1-10. These sheets formalize the drawings and are otherwise the same as Figures 1-10 currently on file, with the exception of Figure 7, as explained below.

Figure 7 contains various changes that have been made for the purposes of clarity. Applicant submits that these changes are not substantive changes and, therefore, add no new matter. In particular, in Figure 7, the adult and the child are now shown standing in the same place instead of in different places, and the bench guard 10, the stove or bench surface 11, and the saucepan 13 are now shown from a side view instead of from a perspective view.

Accordingly, it is submitted that no new matter has been added by the replacement sheets of drawings.

Attachment: Replacement Sheets

REMARKS

Claims 1, 3, 4, 7-9, 11-14, 16, 19-22, 25, and 26 remain pending in this application, with claims 1, 14, 16, 19, 25, and 26 being in independent form. Claims 1, 3, 4, 7-9, 11-14, 16, and 19-22 have been amended. Claims 2, 5, 6, 10, 15, 17, 23, and 24 have been canceled without prejudice or disclaimer of subject matter.

At page 2 of the Office Action, the specification was objected to on account of the form of the abstract. The abstract has been corrected and, accordingly, withdrawal of this objection is respectfully requested.

Claims 1 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 2,688,525 to Lindstrom; and claims 23 and 24, as being anticipated by U.S. Patent 3,512,652 to Armstrong. Claims 2-4, 8, 9, 11-14, 16, and 19-22 were rejected under 35 U.S.C. § 103(a) as being obvious from Lindstrom.

First, cancellation of claims 2, 23, and 24 renders the rejections of those claims moot.

Applicant submits that independent Claims 1, 14, 16, 19, 25, and 26, together with the claims dependent therefrom, are patentably distinct from the cited references for at least the following reasons.

As an initial matter, Applicant notes 37 C.F.R. 1.104(c)(2), as quoted in MPEP 706, which recites, *inter alia*:

...When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

However, while the Office Action does reference all of the claims by number in rejecting them, it is respectfully submitted that the reasoning set forth in the Office Action (especially with respect to the dependent claims) amounts in large part to a general allegation

that the claims are unpatentable, without more clearly explaining the pertinence of the reference, including the particular parts relied on, with respect to each rejected claim.

Applicant further notes with respect to the obviousness rejections that:

... [R]ejections on obviousness cannot be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. MPEP 2141.III, quoting *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385, 1396 (2007).

However, the obviousness rejections as set forth in the Office Action are seen to be mere conclusory statements. Accordingly, any next Action, if it is not a Notice of Allowance, should be made non-final.

Turning to the present invention, the present invention provides a removable barrier arrangement having a location, height, and material that are selected so as to present a physical and/or visual barrier to children but not to adults, in respect of the accidental urged dislodgement of articles or liquids over the edge of a fixed horizontal surface such as a kitchen benchtop, a cooktop, or a table top.

Independent claims 1, 14, 16, 19, 25, and 26 as now presented each include a feature similar to that recited in original claim 20. See the present specification from page 9, line 15, to page 10, line 7, for example (paragraph 0050 of the published application). A notable function of the guard member is to provide a barrier to a child to objects on the far side of the guard member while not acting as a barrier to an adult. Applicant submits that there is no teaching in Lindstrom of a guard member for the prevention of dislodgement of an article or liquid, nor of a guard member acting as a barrier to a child to objects on the far side of that guard member, as now recited in claims 1, 14, 16, 19, 25, and 26.

Lindstrom indeed is silent as to the function of the "screens" (46) located on the "deal

shelves" (D) of the structure. Applicant submits that the use of the word "screen" in Lindstrom alludes to the purpose of providing some notional separation between a "sitting clerk" (column 1, line 25) and a person standing at the other side of the "utility counter-desk" of Lindstrom. Applicant submits that the screens of Lindstrom are not safety guards or intended as barriers with the functions as now recited in the independent claims. Nor, it is submitted, are the screens of Lindstrom continuous nor are they fitted to the edge of the "deal shelves" -- nor do they provide a barrier to the accidental urged dislodgement of an article or liquid.

In addition, also now incorporated into claim 1 is a feature similar to that previously recited in now-canceled claim 2, i.e., the feature in that the safety guard is to be applied to any one of a kitchen bench top, a cook top, or a table top. It is submitted that this feature is not taught or suggested in Lindstrom.

The rejection under 35 U.S.C. 102 cannot be converted into one of obviousness under 35 U.S.C. 103. Applicant submits that, as explained above, there is no teaching in Lindstrom of a guard member which combines the dual function of prevention of dislodgement on the one hand while providing a physical and/or visual barrier to a child to objects on the far side of the safety guard on the other hand. Applicant believes therefore that the safety guard of the present invention as claimed in the independent claims 1, 14, 16, 19, 25, and 26 is not only novel over Lindstrom but also inventive in its combination of the selection of height and material to fulfill either or both of these dual objectives.

For at least the foregoing reasons, independent claims 1, 14, 16, 19, 25, and 26 are seen to be clearly allowable over Lindstrom.

Moreover, claim 26 is also seen to be allowable for being a system which includes a plurality of guard members, each having a different height, and each being selectable for

engagement with the slot based on the height and material of the guard member. (See, e.g., page 9, lines 6-14 of the present application.) Lindstrom is not seen to teach or suggest these features. The screens 46 of Lindstrom are of just one height and are not selectable based on height and material, for example. Claim 26 also recites that the rail is aligned with reference to the front edge of the fixed horizontal surface (e.g., a cook top). (See, e.g., page 9, lines 2-5 of the present application). The screens 46 of Lindstrom are not aligned with reference to the front edge, or, indeed, to any edge, because Lindstrom is directed to a utility-counter desk. Accordingly, claim 26 is seen to be clearly allowable over Lindstrom for at least these reasons as well.

A review of the other art of record, including Stangert, Chen, Schottland, Wylie, Yatsko, Steinhilber, Whetstone, Alberts, Merit, Cyrluk, Hardy, Merit et al., and Armstrong, has failed to reveal anything which, in Applicant's opinion, would remedy the deficiencies of the art discussed above, as references against the independent claims herein. Those claims are therefore believed patentable over the art of record.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicant respectfully requests favorable reconsideration and early passage to issue of the present application.

Respectfully submitted,

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